IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

Bail Appl..No. 7781 of 2007()

: PETITIONER

E.V.NARENDRADAS, S/O. VENUGOPALAN
PANICKER, EDAYAPURATH HOUSE, KALLETTUMKARA,
THRISSUR DISTRICT.

BY ADV. SRI.RAJESH CHAKYAT

RESPONDENTS:

THE SUB INSPECTOR OF POLICE,
VYTHIRI, WAYANAD DISTRICT, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.7781 of 2007

Dated this the 17th day of December 2007

O R D E R

Application for anticipatory bail. The petitioner faces indictment for offences punishable under Sections 495 and 420 I.P.C. The crux of the allegations against the petitioner is that he made false representations to the de facto complainant and induced her to enter matrimony with the petitioner which matrimony was void for the reason that the petitioner had already married earlier. It is further alleged that pretending to be the husband of the victim, he had induced her to part with money also with deliberate fraudulent intentions. The petitioner was not arrested in the course of investigation. The petitioner has hence come to this court apprehending imminent arrest seeking directions under Section 438 Cr.P.C.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. There was no marriage with the de facto complainant at all. False allegations have been raised by the de facto complainant who had defrauded the petitioner with a promise to make visa for foreign employment available to him.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the investigation is already complete. Final report has already been filed before the learned Magistrate. Cognizance has been taken by the learned Magistrate and the case is pending as C.C.No.226/07 before the learned Magistrate. There are no circumstances whatsoever justifying or warranting the invocation of the jurisdiction under Section 438 Cr.P.C. The petitioner may be directed to resort to the ordinary and normal course of appearing before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. In Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such

reasons in this case. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs.Deputy Superintendent of Police [2003(1)KLT 339].

5. In the result, this bail application is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007